IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6315 OF 2005

Mr.Atique Mohamad Khan,)
age about 30 years,)
Occupation - Service,)
residing at 925, Synagogue Street,)
6/3 Supriya Society, Pune - 1.).. Petitioner

Versus

1. The State of Maharashtra,)
by the Secretary,)
Industry, Energy and Labour)
Department, Mantralaya,)
Bombay 22.)

2. The President,)
Industrial Court, Maharashtra,)
7th Arun Chambers, Tardeo,)
Bombay 34.)

3. The Honourable High Court of)
Judicature of Bombay,)
Appellate Side, at Bombay,)
Bombay.).. Respondents

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S/Shri A.V.Anturkar, Advocate i/b S.B.Deshmukh, Advocate, for the Petitioner.

Shri R.M.Patne, AGP for the State.

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CORAM : R.M.S.KHANDEPARKAR &
S.R.SATHE, JJ.

DATED : 16TH JUNE, 2006

JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. The petitioner challenges the order of termination of his services as Labour Judge issued on

29th July, 1994 by the respondent No.1. The challenge is on the sole ground that the same is in violation of the provisions of law comprised under Articles 234 and 235 read with Article 236 of the Constitution of India, in as much as that there had been no consultation with the High Court before termination of the services of the petitioner.

2. The applications were invited for 22 posts of Judges of Labour Courts under Notification dated 29th April, 1992 and in the course of selection process, which followed the said notification, the petitioner was selected by the Maharashtra Public Service Commission for one of such posts on 30th September, 1992. He was accordingly appointed as Labour Judge with effect from 2nd January, 1993 under the order issued by the respondent No.2 in the scale of Rs.3200-100-3500-125-4625. The appointment was for a period of two years and it was on probation. As a Labour Judge, he took charge on 18th January, 1993 at Labour Court, Bhandara. However, the petitioner was served with a notice of termination of his services issued on 29th July, 1994. Hence the present petition.

3. It is the case of the petitioner that he being

a member of judicial services, which are subject to control of the High Court, his services irrespective of the fact whether on probation or otherwise could not have been terminated without prior consultation with the High Court and in the case in hand, there was no such consultation with the High Court, and therefore, the impugned order of termination of the services of the petitioner is bad in law.

4. On the other hand, it is the case of the respondents that the petitioner was on probation and his performance was not satisfactory, and therefore, his services were terminated and hence no fault can be found with the same.

5. Drawing attention to the decisions of the learned Single Judge of this Court in **Labour Law Practitioner's Association & Anr. v. The State of Maharashtra & Ors.,** reported in 1980 Bom.C.R. 13, of the Apex Court in **State of Maharashtra v. Labour Law Practitioners' Association & Ors.,** reported in (1998)2 SCC 688, in **Madan Mohan Choudhary v. State of Bihar & Ors.,** reported in (1999)3 SCC 396, and in **Gauhati High Court & Anr. v. Kuladhar Phukan & Anr.,** reported in (2002)4 SCC 524, the learned advocate appearing for the petitioner submitted that the law on the point

that the Judge of the Labour Court is a member of judicial service within the meaning of the said expression under the Constitution of India is well settled by the decision of the learned Single Judge of this Court and duly confirmed by the Apex Court in **Labour Law Practitioner's Association's case (supra)**. He further submitted that the expression "control" in Article 235 of the Constitution of India includes all stages in the service tenure of a judicial officer, and therefore, the services of the petitioner as the Judge of Labour Court, even though he was on probation, could not have been terminated without prior effective consultation with the High Court, and in the case in hand, there is absolutely no dispute that there was no such consultation with the High Court and the same is apparent from the record. The learned AGP for the respondents, while candidly admitting that there was no consultation with the High Court prior to the termination of the services of the petitioner, submitted that since the petitioner was on probation and his performance was not satisfactory, his services were terminated, and therefore, such an order cannot be held to be illegal.

6. The fact that the Judges in the Labour Courts are the members of the "judicial service" within the

meaning of the said expression under the Constitution of India is well settled pursuant to the decision of the learned Single Judge of this Court in **Labour Law Practitioner's Association's case (supra)** which had been duly confirmed by the Apex Court. In **State of Maharashtra v. Labour Law Practitioners' Association's case (supra)**, it was clearly held that "the Labour Court performs judicial functions and is a court. The Labour Court adjudicates upon disputes that, had it not been for the Industrial Disputes Act, the Bombay Industrial Relations Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, would have been within the jurisdiction of the ordinary civil courts to decide, although the ordinary civil courts may not be able to grant all the reliefs that are contemplated by these Acts. The Labour Courts are, therefore, courts and decide disputes that are civil in nature."

7. Further, after taking into consideration the various earlier decisions including the decision in the matter of **Kumar Padma Prasad v. Union of India,** reported in (1992)2 SCC 428, **Chandra Mohan v. State of U.P.,** reported in AIR 1966 SC 1987 and **Statesman (P) Ltd. v. H.R.Deb,** reported in AIR 1968 SC 1495, the Apex Court had held that ".....

under Article 236 of the Constitution, the Labour Court judges and the judges of the Industrial Court can be held to belong to judicial service. The hierarchy contemplated in the case of Labour Court judges is the hierarchy of Labour Court judges and Industrial Court judges with the Industrial Court judges holding the superior position of District Judges. The Labour Courts have also been held as subject to the High Court's power of superintendence under Article 227."

8. In **Gauhati High Court's case (supra)**, the Apex Court has ruled that "It is settled by a catena of decisions that the word "control" referred to in Article 235 of the Constitution has been used in a comprehensive sense and includes the control and superintendence of the High Court over the subordinate courts and the persons manning them, both on the judicial and the administrative side. Even in such matter in which the Governor may make a decision, the decision cannot be taken save by consultation with the High Court. The consultation is mandatory and the opinion of the High Court is binding on the State Government; else the control, as contemplated by Article 235, would be rendered negated. Such control and consultation are not a matter of mere formality;

they are the constitutional power and privilege of the High Court, also its obligation, and cannot be diluted by sheer inaction or failing to act when the High Court must act."

9. In **Madan Mohan Choudhary's case (supra)**, the Apex Court had ruled that under Article 235 of the Constitution, the High Court's control over the subordinate judiciary is comprehensive and extends over a variety of matters, including posting, promotion and grant of leave. The three words, namely "posting", "promotion" and "grant of leave" used in this article are only illustrative in character and do not limit the extent of exercised by the High Court over the officers of the subordinate judiciary.

10. The law as regards the Judge of the Labour Court being the member of judicial service within the meaning of the said expression under the Constitution of India is thus well settled. Similarly, the expression "control" used in the Article 235 of the Constitution does not relate merely to the posting, promotion and grant of leave but it extents to the effective control of the High Court over the subordinate judiciary in every respect. The three words like "posting", "promotion" and "grant of leave"

are used merely for the purpose of illustrations and they do not indicate the control of the High Court to be limited to those three words.

11. The point sought to be raised in the matter, therefore, should be considered in the background of the settled law on the point of Labour Judge being a member of judicial service within the meaning of the said expression under the Constitution of India and the expression "control", as it is understood under Article 235, to mean effective control of the High Court over the subordinate judiciary in the State and it includes the Labour Courts.

12. It is not in dispute that before passing the order of termination of services of the petitioner, the High Court was not consulted. It is also not in dispute that the petitioner was on probation and was not confirmed in the service. However, once the petitioner is shown to have entered the judicial service, applying the law laid down by the Apex Court, as referred to above, the contention of the respondents that in such cases prior consultation with the High Court was not necessary cannot be accepted. From the day one the petitioner entered the service, he was subjected to the control of the High Court, as

contemplated under Article 235 of the Constitution. Being so, in relation to prior termination of the petitioner's services, it was absolutely necessary for the respondent Nos.1 and 2 to consult the High Court and only thereupon, as per the advise of the High Court, they have to take appropriate action. The respondent Nos.1 and 2 having proceeded to take action of termination of the services of the petitioner without consulting the High Court, they have clearly acted illegally and in violation of the mandate of Article 235 of the Constitution of India. Being so, termination of the service of the petitioner has been rendered ab initio illegal.

13. The consultation is not a formality as has already been held by the Apex Court. Merely because the order of termination was communicated through the High Court, that does not amount to compliance of the mandate of Article 235 of the Constitution. In the affidavit-in-reply filed by the Registrar of the High Court, there is no whisper about such consultation with the High Court by the respondent Nos.1 and 2 prior to the passing of the impugned order. Indeed, the learned advocate appearing for the respondents has also candidly admitted that there was no consultation with the High Court prior to the passing of the

impugned order.

14. Attention was sought to be drawn to the Notification dated 14th September, 1999 under which the rules called "Maharashtra Judicial Officers of the Courts of Enquiry, Labour Courts, Industrial Courts (Recruitment, Appointment and Disciplinary Action) Rules, 1999 were published, while contending that it was under these rules that the Labour Court was brought under the effective control of the High Court. The contention is to be rejected as being totally devoid of substance. The control of the High Court on the subordinate courts including the Labour Courts is contemplated under the Constitution of India itself and Articles 235 and 236 are very clear in that regard, and this has been clearly explained by the learned Single Judge as well as by the Apex Court in **Labour Law Practitioner's Association's case (supra)**. In fact, the decision of the learned Single Judge was delivered in the year 1979 and the decision of the Apex Court was delivered in the year 1988.

15. It was also sought to be contended that the performance of the petitioner as Labour Judge was not satisfactory, and therefore, there is no justification for interference in the order of termination of the

petitioner's services, while he was on probation. Undoubtedly, in normal circumstances, if the performance is not satisfactory, the termination of services of the petitioner could not have been found fault with. However, assessment of performance has to be made by the High Court and based on that, the High Court has to advise whether the incumbent should be continued in judicial service or not, and once such advise is given, it would be binding on the respondents. However, in the case in hand, admittedly, no such consultation was made with the High Court, and consequently, conclusion which is said to have been arrived at by the other respondents about inefficiency cannot be considered as lawful process for termination of the services of the petitioner even while he was on probation.

16. In the result, therefore, the order of termination of services of the petitioner dated 29th July, 1994 issued against the petitioner cannot be sustained and is liable to be quashed and set aside, and accordingly the same is hereby quashed and set aside. The rule is made absolute in terms of the prayer clause 16(c) of the petition. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(S.R.SATHE, J)